

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 17-24 are pending in this application. Claims 17 and 21 are amended by the present amendment. No new matter is added.

In the outstanding Official Action, Claims 17 and 21 were rejected under 35 U.S.C. §101.

With regard to the rejection of Claims 17 and 21 under 35 U.S.C. §101, that rejection is respectfully traversed. Claims 17 and 21 are amended to recite that the control information is configured to be accessed by the information recording/reproducing apparatus in order to reproduce the audio/video data. Accordingly, it is respectfully requested that this rejection be withdrawn.

The outstanding Office Action asserts that Claims 17 and 21 are non-statutory as “the claims are non-functional descriptive material recorded on recording medium. ... ‘Nonfunctional descriptive material’ includes but not limited to music, literary works and a compilation or mere arrangement of data.”¹

Initially, it is respectfully noted that Claims 17 and 21 are drawn to “an information recording medium,” not “non-functional descriptive material.” Further, Claims 17 and 21 recite “a management area separate from said data area and configured to store said control information” and “the control information is configured to be accessed by the information recording/reproducing apparatus in order to reproduce the audio/video data.” Thus, even assuming *arguendo* that the audio/video data is non-functional descriptive material, the control information is *functional* descriptive material, as the control information is a

¹See the outstanding Office Action at page 3, lines 6-10.

computer program that imparts functionality when employed as a computer component.²

Finally, well settled case law holds that when *functional* descriptive material is recorded on some computer-readable medium it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized. *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994). See also Interim Guidelines, Annex IV, page 50, lines 13-20 and MPEP §2106(IV)(A).

Thus, based on the clear language of these guidelines, Claims 17 and 21 are statutory as they define *functional* descriptive material stored on a medium, *and* the functionality of the functional descriptive material which is realized based on the interrelationship of the structure to the medium and recited hardware components.

Further, should the Examiner disagree with the above conclusion, the Interim Guidelines at page 3, lines 11-15 and MPEP §2106 also state that,

Whenever practicable, Office personnel should indicate how rejections may be overcome and how problems may be resolved. A failure to follow this approach can lead to unnecessary delays in the prosecution of the application.

Applicants respectfully submit, as noted above, that the rejection under 35 U.S.C. §101 should be withdrawn. However, if the rejection under U.S.C. §101 is to be maintained, applicants respectfully request that the Examiner provide an explanation of the rejection in view of the Interim Guidelines and MPEP §2106.

²See, e.g., Interim Guidelines, Annex IV, page 50, lines 4-6 and MPEP §2106(IV)(A).

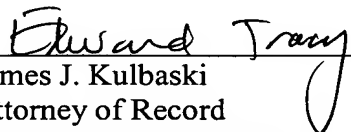
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Accordingly, in view of the present amendment, no further issues are believed to be outstanding and the present application is believed to be in condition for formal allowance.

An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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